RAMANOOJUM MUNIANDY & ORS v. KETUA SETIAUSAHA, KEMENTERIAN DALAM NEGERI & ORS

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
HAMID SULTAN ABU BACKER JCA
ABANG ISKANDAR JCA
[CIVIL APPEAL NO: W-01-433-10-2012]
22 MARCH 2016

ADMINISTRATIVE LAW: *Exercise of administrative powers – Decision – Rejection of applicants' application for citizenship – Applicants obtained order declaring Malaysian citizenship from High Court subject to certain conditions – Relevant steps taken to fulfil conditions – Whether applicants complied with conditions set out under s. 44(1) of Specific Relief Act 1950 – Whether fit and proper case for granting order of mandamus – Federal Constitution, art. 14(1)(b)*

CONSTITUTIONAL LAW: *Citizenship – Application for – Applicants obtained order declaring Malaysian citizenship from High Court subject to certain conditions – Relevant steps taken to fulfil conditions – Whether applicants complied with conditions set out under s. 44(1) of Specific Relief Act 1950 – Whether fit and proper case for granting order of mandamus – Federal Constitution, art. 14(1)(b)*

The first appellant was a Malaysian citizen and was married to an Indian citizen. The first appellant's two children, the second and third appellants, were born in India. Due to problems faced in renewing the first appellant's wife's passport, the first appellant could not bring back the second and third appellants to Malaysia. The first appellant subsequently obtained an order from the High Court ('High Court order') declaring the second and third appellants as Malaysian citizens by virtue of art. 14(1)(b) of the Federal Constitution ('the Constitution') subject to: (i) a formal application by the second and third appellants to the Consulate General of Malaysia in India; and (ii) upon receipt of the application and verification of their births, the second and third appellants were to be furnished with certificates of citizenship and MyKad identification cards. The second and third appellants submitted their application in compliance with the High Court order and the applications were accepted by the Malaysian Consulate in India. The respondents appealed against the High Court order and the Court of Appeal set aside the High Court order. However, the Court of Appeal held that the appellants were not prevented from making the necessary application. Subsequently, the first respondent issued a letter to the appellants informing them of the rejection of their application for an extension of time to register the births of the second and third appellants. Arising from the first respondent's decision, the appellants filed a judicial review application challenging the decision. The High Court Judge ('HCJ') granted the order of *certiorari* prayed for in prayer (1) by the appellants holding that the appellants

A did not apply for an extension of time. However, the HCJ dismissed prayer (2) of the application in which the appellants sought an order of *mandamus* to compel the respondents to issue the birth certificates, citizenship and MyKad to the second and third appellants. Hence, this appeal against the dismissal of prayer (2).

B **Held (allowing appeal)**
Per Alizatul Khair Osman JCA delivering the judgment of the court:

(1) The appellants' submission, that they had taken all the steps required of them to fulfil the requirements of art. 14(1) read together with item 1(c) of Part II of the Second Schedule of the Constitution, was persuasive. The High Court order did not require them to apply for any extension of time. In fact, the order declared the second and third appellants to be Malaysian citizen in accordance with art. 14(1)(b) subject, *inter alia*, to the second and third appellants filing a formal application with the Malaysian Consulate in India for the registration of the births within three months of the date of the High Court order. The second and third appellants had duly submitted the application within the time prescribed and their applications were duly processed by the Malaysian Consulate in India. (paras 37-40)

(2) Whilst the High Court order was set aside by the Court of Appeal, the Court of Appeal allowed the appellants the liberty to make the necessary applications. Hence, the appellants were not required to submit a new application for the purpose of registering their births under art. 14(1) read together with item 1(c) of Part II of the Second Schedule. (paras 41 & 43)

(3) The HCJ found that the second respondent's decision in rejecting the appellants' application for extension of time was irrational and an error of law as the application was not for an extension of time but instead to be registered as citizens. The respondents' failure to cross-appeal against that decision amounted to an acceptance of the finding. Therefore, it could be inferred that the Federal Government had impliedly agreed to allow the registration of the appellants' birth beyond the one year period. (paras 45, 46 & 57)

(4) Item 1(c) does not prescribe the manner in which extension may be applied. As long as it can be shown that the appellants have complied in substance with the requirements of item 1(c), Part II of Schedule, it will be sufficient compliance. As the appellants had satisfied the requirements, it was incumbent on the respondents, in particular, the second respondent, to process the appellants' applications and to issue the documents prayed for. Hence, this was a fit and proper case for the granting of the order of *mandamus* as the conditions set out in s. 44(1) of the Specific Relief Act 1950 had been complied with. (paras 58-60)

***Bahasa Malaysia** Headnotes*

Perayu pertama adalah warganegara Malaysia dan telah berkahwin dengan warganegara India. Anak-anak perayu pertama, iaitu perayu kedua dan ketiga, dilahirkan di India. Disebabkan masalah dalam pembaharuan pasport isterinya, perayu pertama tidak boleh membawa pulang perayu kedua dan ketiga ke Malaysia. Perayu pertama kemudian memperoleh perintah dari Mahkamah Tinggi ('perintah Mahkamah Tinggi') mengisytiharkan perayu kedua dan ketiga sebagai warganegara Malaysia berikutan per. 14(1)(b) Perlembagaan Persekutuan ('Perlembagaan') tertakluk kepada: (i) permohonan rasmi oleh perayu kedua dan ketiga kepada Konsulat Malaysia di India; dan (ii) selepas menerima permohonan dan pengesahan kelahiran mereka, perayu kedua dan ketiga akan diberikan sijil kewarganegaraan dan kad pengenalan diri MyKad. Perayu kedua dan ketiga mengemukakan permohonan mereka sebagai mematuhi perintah Mahkamah Tinggi tersebut dan permohonan mereka diterima oleh Konsulat Malaysia di India. Responden-responden merayu terhadap perintah Mahkamah Tinggi dan Mahkamah Rayuan mengetepikan perintah Mahkamah Tinggi tersebut. Walau bagaimanapun, Mahkamah Rayuan memutuskan bahawa perayu-perayu tidak dihalang daripada membuat permohonan yang sewajarnya. Kemudian, responden pertama mengeluarkan surat kepada perayu-perayu memaklumkan tentang penolakan permohonan mereka bagi lanjutan masa untuk mendaftarkan kelahiran perayu kedua dan ketiga. Berbangkit daripada keputusan responden pertama, perayu-perayu memfailkan permohonan semakan kehakiman mencabar keputusan tersebut. Hakim Mahkamah Tinggi ('HMT') membenarkan perintah *certiorari* yang dipohon perayu-perayu dalam permohonan (1) memutuskan bahawa perayu-perayu tidak memohon lanjutan masa. Walau bagaimanapun, HMT menolak permohonan (2) permohonan tersebut di mana perayu-perayu memohon perintah *mandamus* mendesak responden-responden mengeluarkan sijil kelahiran, kewarganegaraan dan MyKad kepada perayu kedua dan ketiga. Oleh itu, rayuan ini terhadap penolakan permohonan (2).

Diputuskan (membenarkan rayuan)
Oleh Alizatul Khair Osman HMR menyampaikan penghakiman mahkamah:

(1) Penghujahan perayu-perayu, bahawa mereka telah mengambil semua langkah yang diperlukan untuk memenuhi keperluan per. 14(1) dibaca bersama-sama dengan item 1(c) Bahagian II Jadual Kedua Perlembagaan, adalah meyakinkan. Perintah Mahkamah Tinggi tidak memerlukan mereka memohon lanjutan masa. Hakikatnya, perintah tersebut mengisytiharkan perayu kedua dan ketiga sebagai warganegara Malaysia menurut per. 14(1)(b) tertakluk kepada, antara lain, pemfailan permohonan rasmi perayu kedua dan ketiga di Konsulat Malaysia di India bagi pendaftaran kelahiran dalam tempoh tiga bulan dari

A tarikh perintah Mahkamah Tinggi. Perayu kedua dan ketiga telah mengemukakan permohonan mereka dalam tempoh yang ditetapkan dan permohonan mereka diproses dengan sewajarnya oleh Konsulat Malaysia di India.

B **(2)** Walaupun perintah Mahkamah Tinggi diketepikan oleh Mahkamah Rayuan, Mahkamah Rayuan memberikan kebebasan kepada perayu-perayu untuk membuat permohonan yang diperlukan. Oleh itu, perayu-perayu tidak perlu mengemukakan permohonan baru bagi tujuan mendaftarkan kelahiran mereka di bawah per. 14(1) dibaca bersama-sama dengan item 1(c) Bahagian II Jadual Kedua.

C **(3)** HMT mendapati keputusan responden kedua menolak permohonan perayu-perayu bagi lanjutan masa tidak rasional dan kekhilafan undang-undang kerana permohonan tersebut bukan untuk lanjutan masa, sebaliknya untuk didaftarkan sebagai warganegara. Kegagalan responden-responden membuat rayuan balas terhadap keputusan itu
D membentuk penerimaan dapatan tersebut. Oleh itu, boleh disimpulkan bahawa Kerajaan Persekutuan secara tidak langung bersetuju membenarkan pendaftaran kelahiran perayu-perayu melangkaui tempoh satu tahun.

E **(4)** Item 1(c) tidak memperuntukkan cara bagi permohonan lanjutan masa. Memadai jika boleh ditunjukkan bahawa perayu-perayu telah mematuhi secara asasnya dengan keperluan item (c), Bahagian II Jadual. Oleh sebab perayu-perayu telah mematuhi keperluan-keperluan tersebut, adalah penting bagi responden-responden, khususnya, responden kedua, memproses permohonan perayu-perayu dan mengeluarkan dokumen-
F dokumen yang dipohon. Oleh itu, ini adalah kes yang sewajarnya bagi pemberian perintah *mandamus* kerana syarat-syarat yang dibentangkan dalam s. 44(1) Akta Relif Spesifik 1950 telah dipatuhi.

Case(s) referred to:

G *Haja Mohideen MK Abdul Rahman & Ors v. Menteri Dalam Negeri & Ors [2007] 6 CLJ 662 HC **(refd)***

*Koon Hoi Chow v. Pretam Singh [1972] 1 LNS 56 HC **(refd)***

Legislation referred to:

Federal Constitution, art. 14(1)(b), Second Schedule Part II item 1(c)
Specific Relief Act 1950, s. 44(1)

H *For the appellants - M Manoharan; M/s M Manoharan & Co*

For the respondents - Shamsul Bolhassan, SFC (Kogilambigai Muthusamy, FC with him); AG's Chambers

[Editor's note: Appeal from High Court, Kuala Lumpur; Judicial Review No: R2-25-271-
I *11-11 (overruled).]*

Reported by S Barathi

JUDGMENT

Alizatul Khair Osman JCA:

[1] This is an appeal against the decision of the learned High Court Judge who had dismissed the appellants' application for an order of *mandamus* to compel the respondents to issue the birth certificates, citizenship and MyKad to the second and third appellants.

[2] We had, after hearing submission from learned counsel for the appellants, learned Senior Federal Counsel for the respondents, unanimously allowed the appeal.

[3] The background facts are important to understand the context in which this appeal was brought.

Background Facts

[4] The first appellant, a Malaysian citizen married one, Pusham a/p Nagalingam an Indian citizen on 13 September 1960. The first appellant's wife gave birth to the second and third appellants on 20 May 1975 and 19 July 1978 respectively in India.

[5] In February 1978 the first appellant's wife sought to renew her passport which was due to expire. However, she faced problems renewing her passport at the Malaysian Consulate in Madras, India. Efforts were made by the Government to bring back the first appellant's wife and children to Malaysia but to no avail.

[6] The first appellant then filed Originating Summons No. R1-24-70-2007 and on 12 December 2009 it was granted an order by the High Court declaring the second and third appellants as Malaysian citizens by virtue of art. 14(1)(b) of the Federal Constitution (art. 14(1)(b)) subject to the following terms:

(a) a formal application is made by the second and third appellants to the Consulate General of Malaysia in India; and

(b) upon receipt of the application and verification of their births, the second and third appellants were to be furnished with certificates of citizenship and MyKad identification cards.

An extract of the order of the High Court (the said High Court order) reads as follows:

> Adalah Diperintahkan bahawa Plaintif Kedua, Thirupathi a/l Ramanujam dan Plaintiff Ketiga, Meena a/p Ramanujam adalah warganegara Malaysia yang sah di sisi undang-undang berikutan Perkara 14(1)(b) Perlembagaan Persekutuan, Malaysia tertakluk kepada suatu permohonan secara formal difailkan oleh Plaintif Kedua dan Plaintiff Ketiga untuk pendaftaran kelahiran mereka di Suruhanjaya Malaysia di India dalam tempoh tiga (3) bulan dari tarikh hari ini Dan Selanjutnya Diperintahkan bahawa setelah pemfailan permohonan formal tersebut dan setelah

A verifikasi kelahiran mereka, Plaintif Kedua dan Plaintif Ketiga masing-masing mestilah diberi, Sijil Kewarganegaraan dan Kad Pengenalan MyKad bagi Plaintif Kedua dan Ketiga Dan Akhirnya Diperintahkan bahawa tiada perintah mengenai kos.

[7] The respondents appealed against the said High Court order but did B not apply for a stay.

[8] In the meantime in compliance with the said High Court order the second and third appellants submitted their application for registration of their birth at the Malaysian Consulate in India. The said applications were accepted by the Consulate. A processing fee (or "bayaran pendaftaran C kelahiran luar negara") of RM20 was paid for each application on 24 May 2010 (exh. RM16).

[9] On 21 March 2011, the Court of Appeal set aside the said High Court order but held that the appellants are not prevented from making the necessary application … ("responden-responden tidak dihalang untuk membuat D permohonan yang diperlukan" exh. RM17).

[10] On 21 September 2011, the first respondent issued a letter to the appellants informing them that their applications had been rejected. (the first respondent's decision).

E **The Judicial Review Application**

[11] Arising out of the first respondent's decision, the appellants filed a judicial review application challenging the decision. In the letter conveying their decision, the first respondent stated that they rejected the appellants' application for an extension of time to register the birth of the second and F third appellants for two reasons:

(i) the appellants have acquired Indian citizenship; and

(ii) they never resided in Malaysia.

G **[12]** We reproduce below the relevant part of the first respondent's letter dated 21 September 2011:

> Dukacita dimaklumkan bahawa permohonan tuan melanjutkan tempoh pendaftaran kelahiran kanak-kanak yang lahir di luar Negara di bawah Seksyen 1(c) Jadual Kedua, Bahagian II Perlembagaan Persekutuan adalah tidak berjaya kerana setelah disemak subjek didapati memiliki taraf H kewarganegaraan India dan tidak bermastautin di Malaysia.

[13] The learned judge, after hearing the application, granted the order of *certiarori* prayed for by the appellants in prayer (1) of their application and quashed the said decision. In her grounds of judgment, the learned judge found as follows as regards the first respondent's decision: I

> [11] I have examined the impugned decision. The Respondent states in the letter that the application by the Applicants for extension of time under s. 1(c) of Part II of the Second Schedule was declined. The Applicants

however did not apply for any extension of time. The Applicants relied on the Order of the High Court which makes no mention of the requirement to extend time stipulated under s. 1(c) of Part II of Second Schedule. Section 1 (c) provides as follows:

> Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that to say:
>
> a) …
>
> b) …
>
> c) Every person born outside the Federation whose father is at the time of birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government;
>
> d) …
>
> e) …

[12] It would appear that the High Court Order makes no requirement on the Applicants to apply for any extension of time as spelled out under s. 1 (c) of Part II, Second Schedule. There is no doubt that the Applicant never apply (sic) for any extension of time ...

[14] For this reason I hold the view that the decision declining something which was never applied for is therefore tainted with irrationality, in the sense of *Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 All ER 935, referring to the concept of *Wednesbury* Unreasonableness in *Associated Provincial Pictures House v. Wednesbury Corporation* [1948] 1 KB 223.

…

It is my considered view that the impugned decision is liable to be quashed on this ground. For the above reason I allow the application of the Applicant in prayer 1.

[14] The learned judge however dismissed prayer (2) of the appellant's application for judicial review. In prayer (2) of their application, the appellants sought the following order:

> 2. Pemohon diberi kebenaran untuk memohon suatu *perintah mandamus* (an application for leave to apply for an order of *mandamus*) *mengarahkan responden-responden untuk mengeluarkan Sijil Kelahiran, Kewarganegaraan dan Kad Pengenalan MyKad* kepada pemohon-pemohon kedua dan ketiga.
>
> (emphasis added)

This is the part of the High Court's order that the appellants are appealing against. The respondents did not appeal against the learned judge's decision to grant prayer (1).

[15] In dismissing the appellant's application for an order of *mandamus*, the learned judge held as follows:

> … in my view the Applicants are not entitled to be granted with a writ of *mandamus* sought because s. 44 requires cumulative compliance with all the conditions listed out, in that provision. The Applicants had not fulfilled the requirement particularly s. 44(b) of the SRA 1950, for writ of *mandamus* to be issued.

[16] In arriving at the aforesaid conclusion, the learned judge found that the appellants "had not complied with the second limb of the requirement under item 1 (c) of Part II of the Second Schedule, hence there is no duty on the Federal Government to exercise its discretion nor to register the applicants as citizen (sic)". (See para. 30, p. 27 of the rekod rayuan tambahan).

[17] More specifically the learned judge found that there was never any attempt by the appellant herein to seek for an extension of time to register the second and third appellants' birth as required under item 1(c) of Second Schedule of the Federal Constitution. It was the learned judge's view that art. 14(1)(b) must be read together with item 1(c) of Part II of the Second Schedule of the Federal Constitution and as the appellants had failed to comply with the second limb of the requirement under item 1(c) of Part II of the Second Schedule (in that they had failed to apply for an extension of time to register the second and third appellants' birth) there is therefore no duty on the part of the Federal Government to exercise its discretion nor to register the appellants as citizens.

The Appeal

[18] Before us learned counsel for the appellants submitted that it was an undisputed fact that:

(a) the second and third appellants were born in India;

(b) the second and third appellants' births were not registered with the Malaysian Consulate in India within one year of their births;

(c) pursuant to the said High Court order (the order not having been stayed), the appellants filed their application to register the births of the second and third appellants within the three month period stipulated in the above said High Court order; and

(d) the appellants have paid the processing fee ("bayaran pendaftaran kelahiran luar negara") of RM20 for each appellant on 24 May 2010.

[19] Learned counsel contended that the fact that the respondents succeeded in their appeal against the said High Court order of 12 November 2009 made no difference as the appellants have already complied with the relevant provisions of the Federal Constitution since there was no stay pending the disposal of the appeal.

[20] Further whilst the Court of Appeal had reversed the said High Court order, it also gave liberty to the appellants to make the necessary applications. More importantly according to learned counsel there is a letter from Senior Federal Counsel of the Attorney-General's Chambers dated 8 April 2011 (erroneously stated as 8 April 2010) to the respondents (exh. RM19) stating, *inter alia*, as follows:

> Kamar ini dimaklumkan bahawa permohonan tersebut sekarang berada di Kementerian Dalam Negeri dan menunggu arahan selanjutnya dari Kamar ini. **Oleh sebab Responden-Responden telah pun membuat permohonan dan pembayaran telah pun dibuat, maka permohonan tersebut diproses seperti permohonan yang lain**.
>
> (emphasis added)

[21] The appellants' birth has now been registered at the Consulate-General of Malaysia in India within three (3) months from the date of the said High Court order. The registration at the Consulate-General of Malaysia took place before 18 January 2010 and it was confirmed by letter dated 18 January 2010 by the Consulate-General of Malaysia in India (exh. RM15).

[22] The extension of time to register their birth was given by the High Court.

[23] The appellants have duly complied with the said High Court order by registering the second and third appellants' birth at the Consulate-General of Malaysia in India.

[24] The respondents did not apply for any stay of the said High Court order.

[25] Since the second and third appellants have registered their birth at the Consulate, then by virtue of art. 14(1)(b) read together with item 1(c) of Part II of the Second Schedule of the Federal Constitution, the second and third appellants are citizens by operation of law. The appellants relied on the case of *Haja Mohideen MK Abdul Rahman & Ors v Menteri Dalam Negeri & Ors* [2007] 6 CLJ 662.

[26] The respondents on the other hand argued that the learned High Court Judge was correct when Her Ladyship decided that the appellants had failed to comply with the qualifications prescribed under item 1(c) of Part II of the Second Schedule of the Federal Constitution. It was apparent from the facts before the court that the appellants never made any attempt to seek for an extension of time to register the births of the second and third appellants as required by item 1(c) of Part II of the Second Schedule.

[27] As the appellants had failed to comply with the requirement of item 1(c) of Part II of the Second Schedule read together with art. 14(1)(b) the conditions for an order of *mandamus* to be issued have not been satisfied by the appellants.

[28] In particular, the learned judge found that the appellants had failed to fulfil the condition in para. (b) of s. 44(1) of the Specific Relief Act 1950 (SRA) and as all five conditions in s. 44(1) are cumulative and must be fulfilled (per Sharma J in *Koon Hoi Chow v. Pretam Singh* [1972] 1 LNS 56; [1972] 1 MLJ 180), the learned judge was correct in holding that the appellants had failed to bring themselves within the purview of the said s. 44(1). Accordingly, the learned judge did not err when she refused to grant the order of *mandamus* prayed for by the appellants.

Our Decision

[29] As stated earlier, after considering the submissions of learned counsel for the appellants and learned Senior Federal Counsel we found merits in the appellant's submission and allowed the appeal. Our reasons are as follows:

Article 14(1)(b) falls under Part III of the Federal Constitution and provides as follows:

> Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) …
>
> (b) every person born or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

The relevant qualification in Part II of the Second Schedule in this case is item 1(c) and reads as follows:

> 1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:
>
> (a) ...
>
> (b) ...
>
> (c) *every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow*, registered at a Consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government; …
>
> (d) ...
>
> (e) ...
>
> (emphasis added)

Thus under art. 14(1)(b) read together with item 1(c) of Part II of the Second Schedule, the following persons are citizens by operation of law:

(a) every person born on or after Malaysia Day; and

(b) every person born outside the Federation;

(i) whose father is at the time of the birth a citizen;

(ii) whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow; and

(iii) registered at a Consulate of the Federation or ...

(the rest of paragraph (c) is not relevant for the purpose of our appeal)

[30] It is not disputed that the second and third appellants were born after Malaysia Day; born outside the Federation (in India) and their father (the first appellant) was at the time of their births a Malaysian citizen.

[31] It is also not in dispute that the births of the second and third appellants were not registered with the Malaysian Consulate in India with one year of their births.

[32] The learned judge was of the view that the appellants failed to fulfil this requirement as "there was never any attempt by the applicants (the appellant) to seek for an extension of time required under item 1(c)".

[33] The appellants however contended that they have taken all the necessary steps required of them for the respondents to issue them with certificates of citizenship and MyKad identification certificate. The question of them applying for an extension of time does not arise.

[34] In compliance with the said High Court order, they have submitted their application to have the birth of the second and third appellants registered with the Malaysian Consulate in Madras within the three month period stipulated in the said High Court order.

[35] The learned judge in her judgment ruled that the appellants can no longer rely on this said High Court order as it has been overruled by the Court of Appeal *vide* its order dated 21 March 2011. The appellants could not therefore contend that the question of them complying with item 1(c) of Part II of the Second Schedule is no longer an issue.

[36] Having considered the factual matrix of this case we were with respect to the learned judge, unable to agree with her.

[37] We find the appellants' submission that they have taken all the steps required of them to fulfil the requirements of art. 14(1) read together with item 1(c) of Part II of the Second Schedule persuasive.

[38] Firstly, as contended by the appellants the said High Court order did not require them to apply for any extension of time. The said High Court order (*supra*) had, in fact declared the second and third appellants to be Malaysian citizens in accordance with art. 14(1)(b) subject, *inter alia*, to the

second and third appellants filing a formal application with the Malaysian Consulate in India for the registration of this birth within three months of the date of the said High Court order.

[39] In compliance with the said High Court order, the second and third appellants duly submitted their application with the Malaysian Consulate in Madras, India before 18 January 2010 (that is within the three months period prescribed by the said High Court order); there being no stay obtained by the respondents pending their appeal to the Court of Appeal.

[40] As seen earlier, their applications were duly processed by the Malaysian Consulate upon the appellants paying the processing fee of RM20. The letter from the Consulate-General of Malaysia in Chennai (formerly Madras) confirmed the appellants' contention. The letter states as follows:

> This is to certify that R Meena Mahadevan, female, born on 16.07.1978, residing at 4/305 A, Jawahar Street, EB Colony, West Ext Madurai 625 017, Tamil Nadu, India and R Thirupathi, male, born on 20.05.1975, residing at 3/88 Karayur Post, Tirumangalam Taluk, Madurai 625 701, Tamil Nadu, has submitted applications for Birth Registration.
>
> 2. We will forward their application to Registration Department of Malaysia, (JPN) for their necessary action.

(Exhibit RM15 at p. 90 of record of appeal (ROA)).

[41] Whilst it is true that the said High Court order was set aside by the Court of Appeal on 21 March 2011, the Court of Appeal also allowed the appellants the liberty to make the necessary application. ("Responden-responden tidak dihalang untuk membuat permohonan yang diperlukan").

[42] In this regard, it was clear that the second and third appellants' application were submitted to the second respondent as evidenced by the latter's letter dated 18 January 2011. Then, on 8 April 2011 (erroneously stated as 8 April 2010) the Attorney-General's Chambers (AG's Chambers) wrote to the second respondent notifying the latter of the Court of Appeal's decision on 21 March 2009 and instructing the second respondent to process the second and third appellants' existing applications:

> Oleh sebab Responden-Responden telah pun membuat permohonan dan pembayaran telah pun dibuat, maka permohonan tersebut bolehlah diproses seperti permohonan yang lain.

(Exhibit RM19).

[43] In other words, the appellants were not required to submit a new application for the purpose of registering their births under art. 14(1)(b) read together with item 1(c) of Part II of the Second Schedule.

[44] Acting on the aforesaid AG's Chambers' letter, the second respondent proceeded to process the appellants' application. On 21 September 2011, the second respondent informed the first appellant that his application for

extension of time to register the second and third appellants' births is rejected on the grounds that they were found to have acquired Indian citizenship and were never resident in Malaysia (exh. RM20 and 21 pp. 104 and 105, ROA). A

[45] The above decision of the second respondent as we have seen earlier was quashed by the learned judge pursuant to the appellants' application for judicial review. The learned judge found that the second respondent's decision rejecting the appellant's application for extension of time irrational and an error of law as the appellants' application was not for an extension of time. Instead the appellants had, pursuant to the said order of the High Court, filed an application for the second and third appellants to be registered as citizens of Malaysia under O. 14(1)(b) read together with item 1(c) of Part II of the Second Schedule. The appellants did not dispute this finding of the learned judge as that had been their position from the outset. B C

[46] The respondents did not cross-appeal this part of the learned judge's decision. The effect of the respondent's failure to cross-appeal is that the respondents accept the learned judge's finding that the appellants' application was not for an extension of time but an application for the second and third appellants to be registered as citizens under art. 14(1)(b) read together with item 1(c) of Part II of the Second Schedule. D

[47] As found by the learned judge the appellants when submitting their applications "… relied on the order of the High Court which makes no mention of the requirement to extend time stipulated under item 1(c) of Part II of the Second Schedule" (p. 18 of the supplementary ROA). E

[48] Although the said order of the High Court had been set aside by the Court of Appeal, the appellants were not asked to file a new application for extension of time. F

[49] Instead the second respondent was advised by the AG's Chambers *vide* their said letter of 8 April 2011 that as the appellants had submitted their applications (to the Malaysian Consulate in India) and the requisite processing fee of RM20 per application has been paid, the second respondent can proceed to process the appellants' application accordingly. G

[50] The second respondent as we had seen treated the appellants' applications as applications for extension of time to register the births of the second and third appellants and decided to reject the appellants' application on the grounds stated earlier. H

[51] The learned judge found the second respondent committed an error of law in treating the appellants' applications as applications for extension of time and accordingly quashed the second respondent's decision on this ground.

[52] The learned judge was of the view that as there had been no application for extension of time made by the appellants item 1(c) of Part II of the Second Schedule had not been complied with and accordingly the appellants were not entitled to an order of *mandamus*. I

A **[53]** In our view, bearing in mind the factual matrix of this case and the sequence of events that took place the learned judge erred in arriving at the aforesaid conclusion.

[54] Under item 1(c) of Part II of the Second Schedule the qualifications required of a person born outside the Federation (after Malaysia Day) to be
B a citizen by operation of law is that he or she must be registered with the Malaysian Consulate within one year of the person's birth or within such longer period as the Federal Government may in any particular case allow.

[55] While this implies that there must be an application for extension of time if a person's birth is to be registered outside the one year period provided
C under item 1 (c) above, the fact remains that the appellants application to be registered as citizens by operation of law was accepted by the Malaysian Consulate and the processing fee of RM20 paid even though they were not applications for extension of time (no doubt in view of the said High Court order). Even after the said High Court order was set aside, the AG's Chambers
D continued to treat the appellants' existing applications as correct and proper as evidenced by their letter of 8 April 2011 to the second respondent which was copied to the appellant's solicitors.

[56] It was only the second respondent that had erroneously treated the
E appellants' applications as an application for extension of time and decided to reject it.

[57] Having treated and having accepted the appellants' applications as applications for the registration of the second and third appellants as citizens by operation of law and the respondents not appealing against the order of
F the court quashing the decision of the second respondent, it can be inferred thereby that the Federal Government has impliedly agreed to allow the registration of the appellants' birth beyond the one year period (without the necessity of an application for extension of time).

[58] As item 1(c) itself does not prescribe the manner in which such
G extension may be applied for it is our considered opinion that so long as it can be shown (or inferred in this case) that the appellants have complied in substance with the requirements of item 1(c) Part II of the Second Schedule that is sufficient compliance.

[59] In view of that, the appellants have to our minds satisfied the
H requirements of item 1(c) of Part II of the Second Schedule and consequently the learned judge erred in holding that the appellants have not fulfilled the requirements of item 1(c) of Part II of the Second Schedule as they had failed to apply for an extension of time.

I **[60]** As the requirements of item 1(c) of Part II of the Second Schedule have been complied with, it was therefore incumbent on the respondents, in particular the second respondent to process the appellants' applications and issue the documents prayed for by the appellants in prayer (2) of the judicial

review application. In other words, this is a fit and proper case for the court to grant the order of *mandamus* as the five conditions set out in s. 44(1) of the SRA in particular condition (b) has been complied with.

[61] For ease of reference we set out below s. 44(1) of the SRA:

> 44. (1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:
>
> Provided that:
>
> (a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;
>
> (b) **such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;**
>
> (c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;
>
> (d) the applicant has no other specific and adequate legal remedy; and
>
> (e) the remedy given by the order applied for will be complete.
>
> (emphasis added)

[62] The appeal is accordingly allowed and the learned judge's decision is set aside and the order for prayer (2) of the appellants' applications is accordingly granted.

[63] We awarded costs of RM10,000 to the appellants and the deposit accordingly refunded.